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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,218	10/29/2003	Lori Ann Johnson	9539.18434	7317
26308	7590	01/05/2005	EXAMINER	
RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			PAYER, HWEI SIU CHOU	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/696,218

Applicant(s)

JOHNSON, LORI ANN

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18, 26 and 33-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34, 36-39 and 41-65 is/are rejected.
- 7) ☒ Claim(s) 18, 26, 33, 35, 40 and 66 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

The amendment filed on 11-29-2004 has been entered.

Claims Objection

Claims 18, 26, 33 and 66 are objected to because of the following informalities:

- (1) In claim 18, line 5, "at least at least" should read --at least--.
- (2) In claim 18, line 5, ""blunt" should read --blunt projection-- (note claims 26 and 33).
- (3) In claim 66, line 6, the word "platform" should not be underlined.

Appropriate correction is required.

Claims Rejection - 35 U.S.C. 102(b)

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 34, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Daboul (U.S. Patent No. 2,423,487).

Daboul discloses an eating utensil (10) comprising a handle (11), a food-carrying platform (12,13) carried by the handle (11) and having a top surface and a bottom

surface, the food-carrying platform (12,13) having at least one tine (13) and extending along an axis, and at least one blunt, curvilinear projection (18) elongated along the axis of the food-carrying platform (12,13) and extending radially from at least one of the top surface and the bottom surface as claimed.

3. Claims 39, 41 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Daboul (U.S. Patent No. 2,423,487).

Daboul discloses an eating utensil (10) comprising a handle (11), a food-carrying platform (12,13) carried by the handle (11) and having a top surface and a bottom surface, the food-carrying platform (12,13) having at least one tine (13) and extending along an axis, and at least one blunt, linear projection (23) transverse the axis of the food-carrying platform (12,13) and extending radially from at least one of the top surface and the bottom surface as claimed.

4. Claims 44-46, 48-51, 53, 57-59, and 61-63 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Potente et al. (U.S. Patent No. 4,638,521).

Since the utensil of Potente et al. shows (Figs.5-6 and column 4, lines 26-35) all the claimed structure, it is held that the concave bowl (18) of Potente et al. is fully capable of carrying food as claimed.

5. Claims 49, 51, 53, 61 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Welt et al. (U.S. Patent No. 5,984,935).

The utensil (2) of Welt et al. comprises a handle (6), a food-carrying platform (8) carried by the handle (6) and having a top surface and a bottom surface, the food-

carrying platform (8) comprising a concave bowl (see Fig.2) and extending along an axis, and at least one blunt, linear projection (22) elongated traverse the axis of the food-carrying platform (8), the projection (22) having a generally smooth bottom surface and extending radially from at least one of the top surface and the bottom surface as claimed. Since the utensil of Welt et al. shows all the claimed structure, it is held the concave bowl of Welt et al. is fully capable of carrying food as claimed.

Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daboul (U.S. Patent No. 2,423,487).

Daboul's eating utensil as set forth shows all the claimed structure except for the shape of the projection (18).

However, the claimed linear projection is not patentably distinct over Daboul's curvilinear projection (18), since it has been held that change in shape is an obvious matter of engineering design choice and not patentably advanced. In re Dailey, 149 USPQ 47, CCPA 1966.

3. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daboul (U.S. Patent No. 2,423,487).

Daboul's eating utensil as set forth shows all the claimed structure except for the shape of the projection (23).

However, the claimed curvilinear projection is not patentably distinct over Daboul's linear projection (23), since it has been held that change in shape is an obvious matter of engineering design choice and not patentably advanced. In re Dailey, 149 USPQ 47, CCPA 1966.

4. Claims 47, 52, 60, 64 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potente et al. (U.S. Patent No. 4,638,521).

The utensil of Potente et al. shows all the claimed structure except for the shape of the projection (26), and the projection (i.e. cleaning element) is integrally molded (see column 4, line 67 to column 5, line 1) with the platform (i.e. the head) rather than overmolded onto the platform.

However, the claimed curvilinear projection is not patentably distinct over the linear projection (22) of Welt et al., since it has been held that change in shape is an obvious matter of engineering design choice and not patentably advanced. In re Dailey, 149 USPQ 47, CCPA 1966.

Further, whether the molding is a one-step molding process (i.e. having the projection and the platform integrally molded in one single molding step) or a two-steps molding process (i.e. having the platform formed by a first molding step and then

overmolding the projection onto the platform) depends more upon personal preference than on any inventive concept.

5. Claims 52 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welt et al. (U.S. Patent No. 5,984,935).

The utensil of Welt et al. as set forth shows all the claimed structure except for the shape of the projection (22).

However, the claimed curvilinear projection is not patentably distinct over the linear projection (22) of Welt et al., since it has been held that change in shape is an obvious matter of engineering design choice and not patentably advanced. In re Dailey, 149 USPQ 47, CCPA 1966.

6. Claims 54-56 are rejection under 35 U.S.C. 103(a) as being unpatentable over Potente et al. (U.S. Patent No. 4,638,521) in view of Foley et al. (U.S. Patent No. 5,779,654).

The utensil of Potente et al. shows all the claimed structure except for the shape of the projection (26).

Foley et al. show a utensil comprising a tongue scraping projection in the form of a dome shape (140, see column 4, lines 17-21).

It would have been obvious to one skilled in the art to modify Potente et al. by substituting the dome-shaped projection of Foley et al. for the ridge-shaped projection of Potente et al. The modification is obvious since it would only involve substituting one known shape of tongue scraping projection for another for scraping a tongue.

Further, it has been held that change in shape is an obvious matter of engineering design choice and not patentably advanced. In re Dailey, 149 USPQ 47, CCPA 1966.

Indication of Allowable Subject Matter

1. Claims 18, 26, 33 and 66 are objected but would be allowable if amended to overcome the objection as set forth.
2. Claims 35 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Remarks

Upon further consideration, the allowable subject matter of claims 44-48, 50, 52, 54-60, 62 and 64 as stated in the interview summary mailed on 11-12-2004 is invalid in light of the rejections as set forth in this Office action. Any inconvenience to the Applicant is regretted.

Applicant argues, at page 9 of the amendment, Daboul's device is a masticating fork, therefore, ridges (18/19/20) and ribs (23) are not blunt projections. On the contrary, as shown in Figs. 2 and 3 of Daboul, the ridge (18) and rib (23) are indeed blunt. Further, Daboul's ridge (18) and rib (23) need not have to be sharp to perform

the function of masticating. Just like molars that are blunt but are capable of grinding food.

Applicant further argues the blades of Welt et al. are not blunt projections but are relative sharp edges. Examiner disagrees. First of all, the projection (22) shown in Fig.2 of Welt et al. is indeed blunt. The scraping edge (26) formed along the leading side wall (24) of the projection (22) is said to be "relatively" sharp to constitute an effective scraping edge. "Relative" is a relative term. Since the blade/projection (22) of Welt et al. is for scraping tongue, it is obvious the projection is not so sharp that a user would cut his/her tongue when using the utensil for tongue scraping. For this reason, the projection (22) of Welt et al. is deemed to be blunt to some extent and as shown in Fig.2 but also "relatively" sharp enough to enable scraping action.

Action Made Final

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

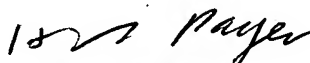
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu.C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 571-273-4511 for proposed amendments.

H Payer
January 4, 2005


Hwei-Siu Payer
Primary Examiner